SMT JUSTICE T. RAJANI

MA CMA No.2577 of 2012

JUDGMENT:

This appeal is preferred by the appellant, who is the respondent No.2-Insurance Company in the Court below, against the judgment, dated 25.08.2008, passed by the I Additional District Court, West Godavari at Eluru, in OP No.348 of 2005, on the grounds that the court below failed to see that the driver of the Truck Auto did not have a valid and effective driving licence to drive the offending vehicle i.e., truck auto bearing No.AP 20U 9835 at the time of the accident; the court below ought to have seen that the truck auto involved in the accident is a transport vehicle, but the driver was having non-transport driving licence, and should have exonerated the appellant from any liability, since driving a vehicle without a valid and effecting driving licence is clear violation of the policy terms and conditions; the court below failed to see that the doctor was not examined and hence, the claimant was not entitled for any compensation towards medical expenses. Based on the above grounds, the appellant seeks to set aside the judgment.

2. Heard both the counsel.

3. The counsel for the appellant, at the hearing, restricts his argument only to the aspect of fixing liability on the appellant. The admitted facts are that the driver of the crime vehicle was having driving licence for non-transport light motor vehicle, but the vehicle, which was driven by him and which was involved in the accident, is a transport light motor vehicle. The driving

licence possessed by the driver of the vehicle is not an appropriate licence for driving the crime vehicle. Though the appellant's counsel assails the judgment and seeks to set aside the judgment to the extent of fixing absolute liability on the appellant, he agrees for an order to pay and recover.

4. In answer to the said contention, the counsel for the 1st respondent relies on the judgment of the Apex Court reported in *S.Iyyapan v. United iNdia Insurance Co. Ltd.,*[1] the apex court after considering the contentions raised therein, at paragraph 18, held as follows:

> "18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside."

5. In view of the above, no fault can be found with the order of the lower court, which fixed liability on this appellant, without any right of recovery from the owner.

6. Accordingly, the MACMA is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

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T. RAJANI, J

July 27, 2018
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[1] (2013) 7 SCC 62